IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4583 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALLABHBHAI KARSANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4583 of 1993

MR JR NANAVATI for Petitioner No. 1

MR SIRAJ GORI AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/04/2004

ORAL JUDGEMENT

By filing instant petition under Article 226 of the Constitution, the petitioner, who was running an

edible oil mill at Gondal under licence No.212 whose licence was cancelled and the fee paid by him for obtaining the licence was confiscated by the District Supply Officer, Rajkot in exercise of powers conferred under the Essential Commodities Act for breach of clause 16 and condition 7 of the Licence under the Gujarat Essential Commodities (Licence, Control and Stock Declaration) Order, 1981, which was confirmed in appeal and in revision, challenges aforesaid three orders and has prayed to issue a writ of certiorari and/or a writ, order or direction quashing and setting aside order dated 19.12.1991, Annexure A to the petition passed by respondent No.3, order dated 14.8.1992, Annexure B to the petition passed by respondent No.2 and order dated 6.4.1993, Annexure C to the petition passed by respondent No.1.

2. The petitioner was having a small two Espalier mill situated at Gondal and was holding licence bearing No.212 for the purpose of running the said mill. On May 23, 1981 the District Supply Officer, Rajkot made search of the premises of the petitioner and found certain illegalities and irregularities and thereafter gave notice to the petitioner on November 2, 1991 alleging therein certain illegalities and irregularities which were mentioned in the said show cause notice. The petitioner gave reply to the said show cause notice on November 26, 1991. Respondent No.3 thereafter held that the petitioner was guilty of charges levelled against him and therefore licence No.212 granted to the petitioner was cancelled and the licence fee paid by him was confiscated vide order dated December 19, 1991, Annexure A to the petition.

3. The petitioner carried the matter before the appellate authority by filing Appeal No.3 of 1992 before the appellate authority i.e., Collector, Rajkot and the appellate authority vide order dated August 14, 1992, Annexure B to the petition, dismissed the appeal.

4. Aggrieved thereby the petitioner filed Revision Application No.154 of 1992 before the Secretary to the Government of Gujarat, Food and Civil Supplies Department. The said revision filed by the petitioner was rejected vide order dated April 6, 1993, Annexure C to the petition, giving rise to the present petition. It is therefore prayed for the relief to which reference is made earlier.

5. Mr. J.R. Nanavati, learned advocate of the petitioner, submits that the irregularities or

illegalities found by the respondents were not of serious nature and that the respondent authorities have passed impugned orders without taking into account the relevant material and therefore the said orders are illegal and without jurisdiction. It is also emphasized by the learned advocate of the petitioner that there was no material evidence before respondent Nos.2 and 3 to come to the conclusion that the petitioner is guilty of grave charges. It is also stressed that the petitioner was detained on the same charges under the Detention Act by the respondent authorities and therefore the petitioner filed Special Criminal Application No.312 of 1992 before this Court. This Court quashed and set aside the order of detention passed against the petitioner and released the petitioner vide order dated April 16, 1992. It is also pointed out by the learned advocate of the petitioner that the petitioner was under detention from 7.2.1992 to 16.4.1992 and therefore the petitioner cannot be again punished by cancelling his licence and confiscating the deposit made by him for obtaining the licence. It is therefore contended that the impugned orders are wrong in law, malafide and without any jurisdiction. It is also highlighted that the machinery of the mill worth RS.4 lakhs to Rs.5 lakhs are lying idle and the petitioner is required to pay salary to the workers without taking work from them. It is emphasised that the petitioner is not able to pay dues of the bank for want of business and therefore on economic ground also it is urged that the petition is required to be allowed. He, therefore, prayed to allow the petition.

6. Mr. Siraj Gori, learned AGP contended that though this petition is labelled as a petition filed under Article 226 of the Constitution, in fact this is a petition filed under Article 227 of the Constitution as the petitioner has claimed a writ of certiorari challenging three orders passed by three quasi-judicial authorities. According to the learned AGP, in a petition filed under Article 227 of the Constitution, the finding of fact recorded by the authorities below cannot be upset by this Court if it is not perverse or manifestly erroneous. According to him, during the search made by the District Supply Officer of the mill premises of the petitioner several irregularities and illegalities were noticed and therefore after hearing the petitioner, the District Supply Officer passed the order of cancellation of licence and also for confiscation of the deposit made by him for obtaining the licence. The said order was subject matter of challenge before the appellate authority as well as revisional authority and both the authorities have affirmed the said finding. Besides

this, Mr. Gori has drawn attention of this Court to para 11 of the order dated April 6, 1993 passed by the revisional authority wherein it has been observed that the High Court while ordering the release of the petitioner from detention has opined that the authorities should have taken action for cancellation of licence instead of adopting the action of preventive detention and hence the impugned orders passed by the authorities below are just and proper. He has pointed out that the revisional authority is the final fact finding authority and it has reaffirmed the order passed by the District Supply Officer, Rajkot. He submitted that there is no merit in the petition and hence same deserves to be rejected. He, therefore, urged to reject the petition.

7. This court has considered the submissions advanced by the learned advocates appearing for the parties, perused the averments made in the petition, three orders passed by the quasi-judicial authorities, i.e., (i) District Supply Officer, Rajkot, (ii) Collector, Rajkot affirming the order passed by the District Supply Officer, Rajkot and (iii) Revisional Authority, i.e., Secretary to Government of Gujarat, Food and Civil supplies Department, reaffirming the order passed by the authorities below, which are annexed as Annexures A, B and C respectively to the petition, and other annexures to the petition.

8. It cannot be disputed that during the search of the mill premises of the petitioner, certain irregularities and illegalities were found by the District Supply Officer and, therefore, a show cause notice was issued to the petitioner to which the petitioner gave his reply. After considering his reply, the District Supply Officer cancelled the licence of the petitioner and also confiscated the deposit made by the petitioner for obtaining licence in exercise of powers conferred under the Essential Commodities Act for committing breach of clause 16 and condition 7 of the Licence issued to him under the Gujarat Essential Commodities (Licence, Control and Stock Declaration) Order, 1981.

9. On perusal of the order dated December 19, 1991, Annexure A to the petition, it is seen that in all there were six irregularities and illegalities alleged against the petitioner. The District Supply Officer has given cogent reasons while holding that the irregularities and illegalities alleged against the petitioner were proved and therefore the impugned order dated December 19, 1991 at Annexure A to the petition came to be passed. The

appellate authority has also given cogent reasons for affirming the said order. The revisional authority has in terms said in para 11 of the impugned order that the petitioner was detained under the provisions of Prevention of Black-marketing Act and the Advisory Board has affirmed the said order which itself was sufficient to show that the petitioner had indulged in the activity of black-marketing. It is also observed in the same paragraph that the High Court while ordering release of the petitioner from detention has observed that the authorities ought to have taken steps for cancellation of the petitioner's licence.

10. In aforesaid view of the matter and more particularly in view of the finding of fact recorded by three authorities below, there is no manner of doubt that the irregularities and illegalities noticed by the District Supply Officer, Rajkot during the search of the mill premises of the petitioner were duly proved and therefore this Court does not deem it expedient to interfere with the order passed by three quasi judicial authorities, in this petition in exercise of the powers under Article 227 of the Constitution.

11. There is considerable force and substance in the submission of Mr. Gori, learned AGP that essentially this is a petition filed under Article 227 of the Constitution as the petitioner has claimed a writ of certiorari by challenging the three orders passed by quasi judicial authorities. It is a settled principle of law that concurrent finding of facts recorded by the authorities below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the authorities below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the authorities below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557, (iii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra v. Milind and others (2000) 1 SCC 4.

12. Seen in the above context, as the petition lacks merits, deserves to be rejected.

13. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged with no order as to costs.

(A.M. Kapadia, J.)

(karan)